

SENATE BILL 3956  
By Burchett

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 68,  
relative to pyrotechnics.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 104, is amended by adding  
the following as a new, appropriately designated part:

**§ 68-104-201.** The intent of this part is to establish a self-funded licensing  
program for display fireworks, pyrotechnic, and flame effect exhibitors and a certification  
program for individuals conducting fireworks displays, proximate pyrotechnic displays,  
and flame effect displays. The purpose of such programs shall be to ensure a level of  
competence that promotes the safety of the viewing public as well as the safety of  
pyrotechnic and fireworks personnel. It is not the intent of this part to regulate Class C  
common fireworks (1.4G consumer fireworks as designated in division 1.4, Title 49,  
Code of Federal Regulations) or consumer fireworks as described by National Fire  
Protection Association (NFPA) standards, except as those types of fireworks may be  
used by an operator in a display regulated by this part.

**§ 68-104-202.** As used in this part, unless the context otherwise requires:

(1) "Certified outdoor display operator" means an individual, who by  
experience, training, and examination recognized and approved by the state fire  
marshal, has demonstrated the necessary knowledge and ability for safely  
assembling, discharging, and supervising of outdoor displays of display fireworks  
in accordance with NFPA 1123 or applicable successor NFPA edition;

(2) “Certified flame effect operator” means an individual, who by experience, training, and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising flame effects in accordance with this part and current NFPA 160 or applicable successor NFPA edition;

(3) “Certified proximate pyrotechnic operator” means an individual, who by experience, training, and examination recognized and approved by the state fire marshal, has demonstrated the necessary knowledge and ability for safely assembling, discharging, and supervising indoor pyrotechnics, indoor pyrotechnic materials used outdoors, or proximate displays of 1.4G or 1.4S fireworks or articles pyrotechnic in accordance with NFPA 1126 or applicable successor NFPA edition;

(4) “Display fireworks” means 1.3G fireworks (formerly D.O.T. Class B) consistent with regulations of the United States department of transportation in division 1.3 in title 49, code of federal regulations, subject to NFPA 1123 requirements or applicable successor NFPA requirements, and designed primarily to produce visible or audible effects by combustion, deflagration, or detonation;

(5) “Event” means any function or gathering at which there will be a fireworks display or pyrotechnic display or flame effect display; however, if a function or gathering lasts more than one (1) day, then each day is deemed to be a separate event;

(6) “Fire marshal” means the state fire marshal;

(7) “Flame effect” means the combustion of an inflammable solid, liquid, or gas to produce thermal, physical, visual, or audible phenomena before an

audience, as defined by current NFPA 160 requirements and standards regulating these effects, or applicable successor NFPA edition;

(8) “Flame effect display” means the use of flame effects before an audience, as defined by and subject to current NFPA 160 requirements or applicable successor NFPA requirements;

(9) “Licensed exhibitor” means a sole proprietor, partnership, corporation, company, firm, or other entity licensed under this part to perform or provide firework or pyrotechnic materials for outdoor fireworks displays, proximate pyrotechnic displays or flame effect displays;

(10) “Outdoor fireworks display” means a presentation of display fireworks for a public or private gathering, as defined by and subject to current NFPA 1123 or applicable successor NFPA edition;

(11) “Proximate pyrotechnics” means pyrotechnic devices for professional use only, used outdoors or indoors, and as defined by and subject to NFPA 1126 or applicable successor NFPA edition as 1.4G or 1.4S fireworks or articles pyrotechnic. Proximate pyrotechnics are similar to consumer fireworks in chemical composition and construction but not intended for consumer use. outdoors or indoors, and as defined by and subject to NFPA 1126 or applicable successor NFPA edition;

(12) “Proximate pyrotechnic display” means the use of pyrotechnic devices and materials, 1.4G or 1.4S fireworks, or articles pyrotechnic when any portion of the audience is closer than permitted by current NFPA 1123 or applicable successor NFPA edition, and subject to current NFPA 1126 requirements or applicable successor NFPA requirements; and

(13) “Sponsor” means any person or organization that contracts with a licensed exhibitor or certified operator to perform a fireworks display, proximate pyrotechnic display or flame effect display.

**§ 68-104-203.** An individual or entity must be a licensed exhibitor in order to perform an outdoor fireworks display, indoor or outdoor proximate pyrotechnic display, or an indoor or outdoor display using flame effects, or to supply display fireworks, indoor or outdoor proximate pyrotechnics, or flame effect materials for display purposes.

**§ 68-104-204.** To receive an exhibitor’s license, an applicant must:

(1) Make application to the fire marshal on a form prescribed by the fire marshal. The application must be accompanied by the required fee. An individual seeking a license as a sole proprietor or on behalf of a business entity must be at least twenty-one (21) years of age and not have been convicted of or pleaded guilty or nolo contendere to any state or federal felony. In the case of a business entity seeking a license, no officer or member of its governing board may have been convicted of or pleaded guilty or nolo contendere to any state or federal felony; and

(2) Submit evidence satisfactory to the fire marshal that the applicant has and will continue in force a liability insurance policy to cover its potential liability for bodily injury and property damage as an exhibitor in the minimum amount of one million dollars (\$1,000,000). The certificate of insurance or other evidence must be issued by an insurer authorized to do business in this state, and an insurer must give the fire marshal thirty (30) days advance notice of any cancellation.

**§ 68-104-205.** If an applicant complies with the applicable requirements of this part and the rules of the fire marshal, then the fire marshal shall issue the exhibitor’s

license within thirty (30) days of receiving the application. The term of the license shall be one (1) year from the date of issuance. Each such license issued must contain a distinct number assigned to the particular exhibitor. The fire marshal shall maintain a list of all licensed exhibitors. The fire marshal shall insert the period of licensure and the exhibitor's license number on such list next to the exhibitor's name. The list of licensed exhibitors shall be posted on the department's website.

**§ 68-104-206.** A license holder with an unexpired license may apply for a new license at any time before the license expires. By applying and paying a fee equal to one and one-half times the normal fee, an exhibitor whose license has expired for ninety (90) or fewer days may apply for a new license to be issued retroactive to the date the old license expired. The fire marshal may deny the issuance of a new license if the applicant does not comply with the applicable provisions of this part or the rules of the fire marshal.

**§ 68-104-207.** The fire marshal may, depending on the seriousness of the infraction, suspend for a period of time or revoke the license of an exhibitor for a violation of this part or a rule of the fire marshal, in accordance with the uniform administrative procedures act, compiled in title 4, chapter 5. In appropriate cases the fire marshal may levy a civil penalty against the exhibitor instead of suspending or revoking the exhibitor's license. If an exhibitor's license is suspended or revoked, then the exhibitor shall cease performing displays immediately. The fire marshal shall remove the exhibitor's name from the list of licensed exhibitors for the period of the suspension or revocation. If an exhibitor's license is revoked for any reason, then such exhibitor is prohibited from applying for a new license for one (1) year from the date of revocation. Upon a finding that an exhibitor's federal license, if applicable, has been revoked or that an exhibitor is without the required liability insurance, the fire marshal

shall revoke such exhibitor's state license. An exhibitor's license that has been revoked solely for failure to have the required liability insurance may be reinstated upon proof by such exhibitor that insurance has been obtained.

**§ 68-104-208.**

(a) The fire marshal shall establish a program of certification for outdoor fireworks display operators, proximate pyrotechnic display operators, and flame effect display operators. To receive certification, an individual must apply to the fire marshal for certification on a form to be prescribed by the fire marshal, must be at least twenty-one (21) years of age, must not have been convicted of or pleaded guilty or nolo contendere to any state or federal felony, and must show that the applicant has worked under competent supervision on at least three (3) displays in each area in which certification is desired in the three (3) years immediately preceding the application. The applicant must also submit a favorable letter of reference from a licensed exhibitor or a certified operator, and a favorable letter of reference from a fire chief or a local fire marshal in a jurisdiction in which the applicant has worked with display fireworks, proximate pyrotechnics, or flame effects, as applicable, in the immediately preceding three (3) years. Until December 31, 2007, the fire marshal may accept a personal resume with a minimum of three (3) verifiable references as a substitute for the letter of reference from the licensed exhibitor or operator. In addition, an individual must meet the following requirements for any area in which certification is desired:

(1) Certified outdoor fireworks display operator: The individual must pass a written examination that tests outdoor display operator knowledge, approved by and conducted under the auspices of the fire

marshal, and pay a certification fee not to exceed one hundred dollars (\$100) to be set by rule by the fire marshal;

(2) Certified proximate pyrotechnic display operator: The individual must pass a written examination that tests pyrotechnic special effects operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred dollars (\$100) to be set by rule by the fire marshal; and

(3) Certified flame effect display operator: The individual must pass a written examination that tests flame effect operator knowledge, approved by and conducted under the auspices of the fire marshal, and pay a certification fee not to exceed one hundred dollars (\$100) to be set by rule by the fire marshal.

(b) If an applicant applies for more than one (1) certification, then the applicant may take the test for any or all certifications and pay a maximum certification fee of two hundred dollars (\$200).

(c) The fire marshal shall establish the scope and type of examinations required by this section. Examinations may be tests developed by a nationally recognized pyrotechnic association. The fire marshal may administer the examination or may enter into an agreement with a testing service or organization. The tests may be administered at a specific location or time. The fire marshal may prescribe a reasonable nonrefundable fee calculated to cover the costs of administering the test.

(d) An operator certification or renewal expires two (2) years after the date of approval or reissuance. To renew certification, an individual must show to the satisfaction of the fire marshal that such individual has attended at least six

(6) contact hours of continuing education training meeting the approval of the fire marshal in the areas of certification desired during the two-year certification period and must pay applicable certification fees.

(e) An operator's certificate may be revoked or suspended by the fire marshal for a violation of this part or the rules adopted by the fire marshal. The fire marshal may levy a civil penalty as authorized by this part instead of revoking or suspending an operator's certificate.

**§ 68-104-209.** The fire marshal, upon application by a certified or licensed operator from another state, may allow such operator to perform displays in Tennessee without submitting to a written examination if the fire marshal determines that the other state's laws allow certified operators from Tennessee to perform displays in such other state and that the other state's laws set standards for operators that are substantially equivalent to those in this state. All other applicable certification provisions apply to the out-of-state operator, and applicants for whom the written examination is waived must comply with all other requirements, including continuing education requirements.

**§ 68-104-210.**

(a) It is unlawful for anyone other than a certified operator to perform an outdoor display using display fireworks, indoor display or proximate pyrotechnics display using 1.4G or 1.4S fireworks or articles pyrotechnic, or indoor or outdoor display using flame effects.

(b) It is unlawful for any person or entity to perform an outdoor display using display fireworks, an indoor display or proximate pyrotechnics display using 1.4G or 1.4S fireworks or articles pyrotechnic, or an indoor or outdoor display using flame effects without an appropriately certified operator on the scene of the



display to supervise during the preparation for the display, during the display, and immediately after the display until the site is released.

(c) It is unlawful for any exhibitor or certified operator to conduct or perform an outdoor fireworks display except in accordance with current NFPA 1123 or applicable successor edition.

(d) It is unlawful for any exhibitor or certified operator to conduct or perform a proximate pyrotechnic display except in accordance with current NFPA 1126 or applicable successor edition.

(e) It is unlawful for any exhibitor or certified operator to conduct or perform a flame effect display except in accordance with current NFPA 160 or applicable successor NFPA edition.

(f) A violation of this section is a Class B misdemeanor.

(g) Notwithstanding any provision of the law to the contrary, any municipality may adopt the provisions of subsections (a) through (e) by reference or substantial duplication as an ordinance violation.

(h) The provisions of subsection (a) through (e) shall not apply to individuals employing 1.4G consumer fireworks (formerly DOT Class C common fireworks) for their personal use.

**§ 68-104-211.**

(a) Nothing in this chapter shall be construed as applying to the shipping, sale, possession, and use of fireworks for public displays by holders of a permit for a public display to be conducted in accordance with the rules and regulations promulgated by the state fire marshal. Such items of fireworks which are to be used for public display only and which are otherwise prohibited for sale and use within this state shall include display shells designed to be fired from mortars and

display set pieces of fireworks classified by the regulation of the United States department of transportation as "Class B special fireworks," and shall not include such items of commercial fireworks as cherry bombs, tubular salutes, repeating bombs, aerial bombs and torpedoes. Public displays shall be performed only under competent supervision, and after the persons or organizations making such displays shall have applied for and received a permit for such displays issued by the state fire marshal. Applications for permits for such public displays shall be made in writing at least ten (10) days in advance of the proposed display, and the application shall show that the proposed display is to be so located and supervised that it is not hazardous to property and that it shall not endanger human lives. If the display is to be performed within the limits of a municipality, then the application shall so state and shall bear the signed approval of the chief supervisory officials of the fire and police departments of such municipality. If the display is to be performed within the limits of a county, but outside the limits of a municipality, then the application shall so state and shall bear the signed approval of the chief supervisory law enforcement and fire department officials of such county, or such officials' designee. The chief supervisory law enforcement and fire department officials of such county, or such officials' designee, shall have the authority to demand all necessary documentation to ensure that the permittee has a fire suppression vehicle or firefighter at the site of the fireworks display as required by this part. Such documentation does not have to be submitted to the department. The applicable law enforcement or fire department official who issues approval of the fireworks display pursuant to this section shall determine how many firefighters are required for such fireworks display. Permits issued shall be limited to the time

specified therein, and shall not be transferable. Possession of special fireworks for resale to holders of a permit for a public fireworks display shall be confined to holders of a distributors permit only.

(b) The permittee conducting an outdoor public display of fireworks shall have at least one (1) fire suppression vehicle with the necessary personnel on site during such outdoor display. The permittee shall be responsible for all costs associated with the fire suppression vehicle.

(c)

(1) The permittee conducting an indoor public display of fireworks shall have at least one (1) trained firefighter on site during such indoor display. The trained firefighter may be a volunteer firefighter. The permittee shall be responsible for all costs associated with the trained firefighters.

(2) Immediately before the start of the program that includes the use of indoor fireworks, the owner of the building or the authorized representative of the owner, shall orally notify attendees of the location of all exits from the building to be used in the event of a fire or other emergency.

(3) At least two (2) working fire extinguishers shall be in the area where the fireworks are to be employed.

(4) In any building in which indoor fireworks are to be employed, signs designating the location of all emergency exits shall be posted in each restroom that is available to the public.

**§ 68-104-212.** The fire marshal shall collect a permit fee from or on behalf of the sponsor for each event at which there will be a display, which may include all or any of

the types of displays regulated by this part, in an amount not to exceed fifty dollars (\$50.00) per permit. A permittee, which may include an exhibitor, sponsor, or operator, conducting multiple essentially identical displays at a single location may be issued a multiple display permit. The fire marshal shall set by rule and collect a multiple display permit fee from or on behalf of the sponsor of an event not to exceed four hundred dollars (\$400) per location. A multiple display permit expires one (1) year after issuance.

**§ 68-104-213.** Any person or entity that stores fireworks or pyrotechnical materials, or both, shall store them in accordance with current National Fire Protection Association standards, particularly NFPA 1124 or applicable successor NFPA edition, and any applicable federal, state, and local laws or ordinances. Violation of this Section is a Class B misdemeanor.

**§ 68-104-214.** In addition to any criminal sanctions, a violation of any provision of this part or of any rule of the fire marshal may subject the offender to a civil penalty of up to ten thousand dollars (\$10,000) per occurrence to be assessed by the fire marshal in accordance with the uniform administrative procedures act compiled in title 4, chapter 5, and to suspension or revocation of an exhibitor's license or an operator's certificate.

**§ 68-104-215.** The fire marshal shall administer and enforce the provisions of this part and may call upon any state, county, or municipal officer or employee for assistance. The fire marshal may promulgate rules to carry out the responsibilities of the fire marshal under this part, including rules relative to:

- (1) Licensing of exhibitors;
- (2) Certification of operators;
- (3) Training;
- (4) Examinations;

(5) The responsible handling of display fireworks, proximate displays, and flame effect displays; and

(6) Other reasonable rules the fire marshal deems necessary to implement this part.

**§ 68-104-216.** This part does not affect the validity of any municipal ordinance further regulating or restricting outdoor displays using display fireworks, indoor or proximate pyrotechnics displays, or indoor or outdoor displays using flame effects.

**§ 68-104-217.** A fireworks advisory council is hereby created and shall consist of nine (9) members. The fire marshal shall appoint the members of the advisory council within thirty (30) days after this act becomes law. Members shall serve without compensation. At least one (1) member shall be a municipal fire chief chosen from a list of nominees submitted by the Tennessee Fire Chiefs Association, and one (1) member shall be a local fire marshal. At least one (1) member shall be from the state fire marshal's office. One member shall be an interested citizen. Five (5) members shall be appointed from the consumer fireworks, display fireworks, and proximate pyrotechnics and flame effects industry. The term of a member is two (2) years or until the member's successor is appointed and qualified. The council shall meet at least two (2) times each calendar year. Each year the council shall, on its own, elect a chair who will conduct the meetings of the council. Special meetings may be called at any time by the chair or in writing by any three (3) members. The council shall adopt rules of order that govern its proceedings. The council shall assist the fire marshal in developing reasonable policies and regulations that will protect the public safety while promoting efficiency and effectiveness. The council may suggest legislative changes for the same purposes. The fire marshal, or any five (5) members voting in favor of removal, may remove any

member of the council for misconduct, incompetence, nonparticipation, or willful neglect of duty.

SECTION 2. Tennessee Code Annotated, § 68-104-102, is amended by deleting subsection (d) and by substituting the following:

(d) The fire marshal shall charge the following fees for permits:

(1) Manufacturer.....	\$1,000
(2) Distributor.....	\$1,000
(3) Retailer.....	\$1,000
(4) Wholesaler.....	\$1,000
(5) Seasonal retailer.....	\$ 100
(6) Exhibitor.....	\$1,000

A person engaged in more than one (1) of the above activities shall pay only one (1) fee based upon the classification requiring the higher fee.

SECTION 3. Tennessee Code Annotated, Section 68-104-101, is amended in subdivision (a)(1) by deleting the semicolon at the end of the subdivision and by adding the following:

. The word “distributor” also includes any person engaged in the business of making sales of display fireworks as defined in Section 68-104-202 or proximate pyrotechnics or flame effect materials to licensed exhibitors for the purpose of providing fireworks, pyrotechnic, or flame effect display services in this state. A distributor may sell display fireworks, proximate pyrotechnics, or flame effect materials only to holders of a Tennessee exhibitor's permit. An out-of-state distributor will not be required to obtain a Tennessee permit when selling exclusively to a holder of a Tennessee manufacturer's, distributor's, wholesaler's or exhibitor's permit;

SECTION 4. Tennessee Code Annotated, Section 68-104-107, is amended by deleting such Section in its entirety.

SECTION 5. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

SECTION 6. Tennessee Code Annotated, Section 4-29-229(a), is amended by adding a new subdivision thereto, as follows:

( ) Fireworks advisory council, created by § 68-104-217;

SECTION 7. For the purposes of promulgating rules, conducting necessary examinations, issuing licenses and certificates, and making appointments to the advisory council, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2007, the public welfare requiring it. Licenses and certificates issued before January 1, 2007, pursuant to this act shall have January 1, 2007, as the issuance date.